

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10687 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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AMBALAL CHHAGANLAL RAWAL

Versus

COMMISSIONER OF POLICE AHMEDABAD

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Appearance:

MR JK PARMAR for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 9th October, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order. As many as four offences punishable under the Bombay Prohibition Act are registered against the petitioner during the period from 1st February, 1998 to 3rd October, 1998. Two of the said cases are pending trial and the remaining two are pending investigation. In each of the said cases, the petitioner was found to be in possession of substantial quantity of country liquor. Besides, two persons, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on public order.

The impugned order of detention has been challenged on the grounds - (a) the names and other particulars of the witnesses have wrongly been withheld by the Detaining Authority. The contention is recorded with a view to rejecting the same; and (b) the chemical report of the liquor alleged to have been seized from the petitioner in each of the offences pending against the petitioner have not been supplied to the petitioner. It is not disputed that the chemical examination reports of the liquor alleged to have been seized from the petitioner have not been furnished to the petitioner. However, it is contended that no demand for such reports have been made by the petitioner even in his representation. Since the said reports have not been relied upon by the Detaining Authority for forming an opinion, same are not required to be necessarily supplied to the petitioner. I am unable to agree to this contention. In the matter of RANVIRSINH KALYANSINH (SPECIAL CIVIL APPLICATION NO. 7490/98, decided on 12th July, 1999), I have taken a view that the reports of the chemical examination are vital documents which may affect the subjective satisfaction of the Detaining Authority. The same, therefore, are required to be furnished to the detenu irrespective of the fact whether the same are relied upon by the Detaining Authority or not. A similar view has been taken by the Division Bench of this court in the matter of AMARSINGH CHATURSINGH CHAUHAN VS THE COMMISSIONER OF POLICE, AHMEDABAD (Special Criminal Application No. 1633/93, decided on 26th July 1994 (Coram : S.Chatterji & A.N.Divecha JJ)) , and also in the matter of AMRUTBHAI RAMABHAI VAGHARI VS COMMISSIONER OF POLICE AHMEDABAD CITY & ORS (1994 {2} GLH (UJ} 5). Mr. Patel has, however, relied upon the judgment of the

learned Single Judge (Coram : Mr.Justice S.M.Soni ) in the matter of GOPAL GANGARAM NEPALI VS COMMISSIONER OF POLICE AHMEDABAD CITY & ANR (1996 (3) GLR, 82). Be it noted that neither of the above referred two Division Bench judgments were cited before the learned Single Judge in the matter of Gopal Gangaram (supra). In paragraph-10 of the judgment, it is observed that the Detaining Authority had not taken into consideration the report of the Chemical Analyser for arriving at a subjective satisfaction to pass the order of detention. The court, therefore, held that " The detenu is required to be furnished the copies of the documents which are taken into consideration by the Detaining Authority for arriving at the subjective satisfaction. When the Detaining Authority has not taken into consideration the reports of the Chemical Analyser to arrive at subjective satisfaction, non-supply of documents does not adversely affect the right to make a representation ". Hence, it is apparent that neither the aforesaid two Division Bench judgments were brought to the notice of the learned Single Judge, nor the matter was directly at issue. The learned Single Judge was not called upon to answer whether the reports of the chemical analysis would be a vital document or not. For the said reason, the said authority can not be held to be a precedent on the matter at issue more particularly when two earlier Division Bench judgments have taken a contrary view. I shall, therefore, follow the Division Bench judgments referred to hereinabove. In the present case, as stated hereinabove, it is not disputed that the petitioner has not been furnished with the reports of the chemical examination, nor it is contended that such reports were not available on the date of the impugned order. It must, therefore, be held that the petitioner is deprived of his Constitutional right to make an effective representation.

Petition is, therefore, allowed. The order dated 9th October, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI